

From: Jill Bachus [<mailto:Jill.Bachus@tn.gov>]
Sent: Wednesday, August 19, 2015 9:52 AM
To: Lisa Nolen
Subject: RE: Sick Leave Credit in TCRS

Lisa,

Anyone who is not being charged for leave (or reduction of salary) taken would fall in this category.

From: Lisa Nolen [<mailto:lnolen@rutherfordcountyttn.gov>]
Sent: Tuesday, August 18, 2015 4:51 PM
To: Jill Bachus
Subject: RE: Sick Leave Credit in TCRS

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - OIR-Security. *****

So, this would also included elected general session judges, elected county mayor, elected highway superintendent? Rutherford County pays the minimum salaries required by state law for all these positions, including the appointed clerk and master.

From: Jill Bachus [<mailto:Jill.Bachus@tn.gov>]
Sent: Tuesday, August 18, 2015 4:25 PM
To: Lisa Nolen
Subject: Sick Leave Credit in TCRS

Lisa,

Please see explanation below concerning sick leave credit in TCRS for county officials. Basically, if an official is not assessed a sick leave day when out of the office, the official cannot claim the sick leave for TCRS purposes. Please let me know if you have further questions.

Jill Bachus
Director
Tennessee Consolidated Retirement System
(615) 253-3845
Jill.Bachus@tn.gov

From: Mary Roberts-Krause
Sent: Tuesday, August 18, 2015 2:58 PM
To: Jill Bachus
Cc: Jamie Wayman
Subject: Whether County Officials may Obtain Sick Leave Credit in the Tennessee Consolidated Retirement System

You have inquired as to whether county officials may obtain sick leave credit in the Tennessee Consolidated Retirement System (“TCRS”). Tennessee Code Annotated, Section 8-34-604 allows employees of the State and of political subdivisions that participate in TCRS to receive TCRS credit for unused accumulated sick leave at retirement. It is my understanding that the “county officials” include the county trustee, register of deeds, county clerk, sheriff, and the assessor of property. It is also my understanding these officials would continue receiving their salaries during any period of absence due to illness, even if the sick leave credits they have purported to accrue were used up. It is my further understanding that attendance records would not be kept on the officials and that the officials would not be required to “use” the sick leave if absent from service due to illness.

All of these facts support that the individuals at issue—as officials and not employees—are entitled to their official salaries regardless of actual time spent performing their official duties and, accordingly, do not actually have “unused” accumulated sick leave upon leaving their respective offices. In order to have “unused” leave, the individuals at issue must have the right to “use” the leave when absent from work due to illness and for the leave taken

to be recorded and deducted as “used”, or to otherwise go on unpaid leave.

The purpose of sick leave is to avoid penalizing employees for illness. *Smith v. Morris*, 778 S.W.2d 857 (Tenn. Ct. App. 1988). Sick leave is time off from work that workers can use to stay home to address their health and safety needs without losing pay. However, so long as each of these officials continues in office, he or she cannot be deprived of the compensation attached to that office even if prevented by temporary incapacity, such as sickness, from performing the duties of the office.

The subject of unused sick leave is inimical and not relevant to holders of public office such as these officials who are heads of their own departments or offices and who are permitted within broad limits to determine their own hours of work. They were selected to perform certain exclusive powers and duties required of them for which they receive specific compensation. The mode of exercise of those powers and duties, if authorized and valid, and the time devoted to them, in the absence of such neglect as to warrant removal from office, are matters left separately to each of them. Sick leave is a term and condition of employment which is not an attribute of or applicable to public offices held by these officials. The very nature of the officials’ offices contemplates that the occupants generally are free to take as much or as little time off as they might wish under a schedule they control. Since there is no maximum time allowable for their sick leaves, or more correctly for their absences because of sickness, credit should not be granted for any “claimed” unused sick leave. Otherwise, the “claimed” unused sick leave would be “accumulated” solely for purposes of establishing retirement credit, which is prohibited by Tennessee Code Annotated, Section 8-34-604(a)(2).

<image001.png> College savings made easy
Low cost, Excellent investment options-TNStars College Savings

529 Program at www.tnstars.com
A Program of the Tennessee Treasury Department